

ATTACHMENT 5

OWNERS VOYAGE ESTIMATION – 1ST VOYAGE ONLY
CALCULATION OF TIME CHARTERPARTY EQUIVALENT
RATE OF HIRE (TCE) PER DAY

VESSEL'S NAME : M/V CAMEL
 C/P DATE : 29/08/07 (delivery 07/09/07)
 CARGO : Barley

(a) Estimated Income:

| | | |
|----------------------|---|---------------------|
| 38000 MT X USD 45/MT | = | 1,710.00 |
| <u>Total Freight</u> | | <u>1,710.00</u> |
| <u>Total Income</u> | | <u>1,645,875.00</u> |

b) Estimated costs

| | |
|-----------------------------------------|------------------|
| IFO : 27,00 / day x 24 days x USD 420 = | 272,160 |
| MDO : 3,0 / day x 41,4 days x USD 710 = | <u>88,182</u> |
| <u>Total</u> | = <u>360,342</u> |
| c) Commission at 3.75% | = 64,125 |

| | |
|-------------------------------|----------------|
| <u>Expected D/AS Loadport</u> | 40,000 |
| Discharge port | <u>25,000</u> |
| Total | 65,000 |
| Suez Canal Dues (2 times) | <u>280,000</u> |
| Total Expenses | <u>705,342</u> |
| | 940,533 |

Net Expected Profit - only for first voyage

Time Charter Equivalent rate: 940,533/41.4 days = 22,718.

ATTACHMENT 6

SECOND VOYAGE MV CAMEL JEDDAH-NOVOROSIYSK-JEDDAH

INCOME

FREIGHT 38.000 MT X 45,50 USD 1.729.000,00 USD

EXPENSES FOR ABOVE VOYAGE

| BUNKERS | USD |
|-------------------------------------------------------------|---------------|
| A. CONSUMPTION AT SEA 15 DAYS | |
| 1. IFO 18 x 27 x 420 | = 170.100 |
| 2. DIESEL 15 x 3.2 x 710 | = 34.080 |
| B. CONSUMPTION AT STRAITS (SUEZ & TURKISH) | |
| 1. PASSING SUEZ TWO TIMES 20+20=40 x 710 | = 28.400 |
| 2. PASSING PASSING TURKISH STRAITS TWO TIMES 12+12=24 x 710 | = 17.040 |
| C. CONSUMPTION AT PORTS 17 DAYS | |
| 1. IFO 17 MT x 1 x 420 | = 7.140 |
| 2. DIESEL 17 x 3.2 =54.4 x 710 | = 38.624 |
| D. VARIOUS EXPENSES | |
| D/A NOVOROSIYSK | = 50.000 |
| D/A JEDDAH | = 25.000 |
| PASSING VOSPORUS | = 10.000 |
| PASSING SUEZ CANAL (TWO TIMES) | = 305.000 |
| TOTAL COMMISSION 5% | = 85.312 |
| TOTAL EXPENSES | = 770.696 USD |

1.729.000 USD - 770.696 USD 958.304 USD : 32 DAYS = 29.947 USD

ATTACHMENT 7

MV CAMEL VOYAGE NOVOROSIYSK / ALEXANDRIA: ACCNT DELTA
CARGO : BULK WHEAT 31.500 MT

| | |
|--------------------------------------|-----------------------|
| VESSEL FIXED WITH DELTA ON | 20/09/07 AT 21.00 HRS |
| VESSEL ARRIVED NOVOROSIYSK | 26/09/07 AT 18.00 HRS |
| SAILED FROM NOVOROSIYSK | 09/10/07 AT 04.40 HRS |
| ARRIVED ALEXANDRIA (EL DEKHEILA) | 14/10/07 AT 14.30 HRS |
| SAILED FROM ALEXANDRIA (EL DEKHEILA) | 12/11/07 AT NOON TIME |

INCOME

| | |
|-------------------------------------|----------------------|
| FREIGHT 31.500 x 36,75 USD..... | 1.167.625 USD |
| DEMURRAGES AT DISCHARGING PORT..... | 399.363 USD |
| TOTAL INCOME..... | 1.566.978 USD |

EXPENSES FOR ABOVE VOYAGE

BUNKERS

USD

A. CONSUMPTION AT SEA 9 DAYS

| | |
|------------------------------|-----------|
| 1. IFO 9DAYS x 27MT x 420 \$ | = 102.060 |
|------------------------------|-----------|

B. CONSUMPTION AT PORT

| | |
|---------------------------------------------------------------------|-----------|
| 1. IFO 44DAYS x 1MT x 420 \$ (INCLUDING 2 DAYS WAITING AT VOSPORUS) | = 18.480 |
| 2. DIESEL 53 DAYS x 3MT x 710\$ | = 112.890 |

C. CONSUMPTION AT TURKISH STRAITS

| | |
|--------------------------|---------|
| 1. DIESEL 12 MT x 710 \$ | = 8.520 |
|--------------------------|---------|

D. VARIOUS EXPENSES

| | |
|------------------------------|----------|
| D/A VOSPORUS | = 10.000 |
| D/A NOVOROSIYSK | = 60.335 |
| D/A ALEXANDRIA (EL DEKHEILA) | = 21.845 |

| | |
|-------------------------|----------|
| TOTAL COMMISSION 6,25 % | = 97.311 |
|-------------------------|----------|

| | |
|------------------------------------|--------------------|
| <u>TOTAL EXPENSES</u> | 431.441 USD |
|------------------------------------|--------------------|

| | |
|--------------------|----------------------|
| PROFIT..... | 1.126.537 USD |
|--------------------|----------------------|

DAILY HIRE: 1.126.537 USD : 53 DAYS = 21.236 USD DAILY

M/V CAMEL

CALCULATION OF TOTAL LOSSES INCURRED
FOLLOWING FROM TRANSGRAIN'S CALCULATION

| | | |
|----------------------------------------------------------------|---------------------------------------|-------------------------------|
| <u>Date of Transgrain Charterparty (29/08/07) delivered on</u> | | 07/09/07 |
| <u>Date of Unlawful Cancellation</u> | | 18/09/07 |
| <u>Date of New Fixture with Delta</u> | | 20/09/07 |
| | Total | 14.830 days |
| | | |
| Total losses of hire | | |
| <u>Until cancellation</u> | = 14,830 days x 22,718 * ¹ | = US\$ 336,908.00 |
| | | |
| <u>TCE Calculated for the Delta Charterparty</u> | = | US\$ 21,236.00 / day |
| <u>Total Number of days of Delta Charterparty</u> | = | 54 days |
| <u>Average TCE Calculated for Transgrain Charterparty</u> | = | 26,332.50* ² / day |
| <u>Difference</u> = US\$ 26,332.50 – US\$ 21,236 | = | US\$ 5,096.50 |
| <u>Total losses of hire under Delta Charterparty</u> | | |
| US\$ 5,096.50 x 54 days | = | US\$ 275,211.00 |
| <u>Total Loss of Hire</u> | = | US\$ 612,119.00 |
| <u>Additional Losses</u> | | |
| Cost of passing Suez Canal | = | US\$ 140,582.00 |
| Bunkers Consumed up to cancellation | = | US\$ 188,706.00 |
| Plus Ballast Bonus | = | US\$ 200,000.00 |
| <u>Total Additional Losses</u> | = | US\$ 529,288.00 |
| <u>Total Losses</u> | | <u>US\$ 1,141,407.00</u> |

*1 Please refer to Attachment 5

*2 Average TCE of Transgrain Charterparty = (22,718 + 29,947) / 2 = 52,665 / 2 = 26,332.50

ATTACHMENT 9

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DAMAGES

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ON
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BY

HARVEY McGREGOR
Q.C., D.C.L., S.J.D.

CHAPTER 42 ON THE HUMAN RIGHTS ACT CONTRIBUTED BY
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JULIAN PICTON

SEVENTEENTH EDITION

LONDON
SWEET & MAXWELL
2003

injured, fails to take reasonable steps to obtain medical aid and thereby fails to cut down the pain and suffering resulting from the injury.¹⁸ Lord Sumner in *Admiralty Commissioners v S.S. Chekiang*¹⁹ and again in *Admiralty Commissioners v S.S. Susquehanna*²⁰ clearly recognised the application of the mitigation doctrine to tort and in *The Liverpool (No.2)*²¹ Lord Merriman P. said similarly: "The classic statement [namely of Lord Haldane], although made in an action arising out of a breach of contract, applies equally, *mutatis mutandis*, to tort."

(b) A question of fact or a question of law. In *Payzu v Saunders*²² both Banks and Scrutton L.JJ. said that the question of mitigation of damage is a question of fact²³; in *The Solholt*²⁴ Sir John Donaldson M.R. said²⁵ that "whether a loss is avoidable by reasonable action on the part of the claimant is a question of fact not law" and that "this was decided in *Payzu v Saunders*".²⁶ It has never been doubted since; today it tends to be regarded as trite law. One result of this is that, once a court of first instance has decided that there has been, or has not been, a failure to mitigate, it is difficult to persuade an appellate court to come to a different view. Mitigation being a question of fact, "it is therefore rarely appropriate", said Potter L.J. in *Standard Chartered Bank v Pakistan National Shipping Corp.*²⁷ "to interfere with the conclusions of the trial judge based as they are on the evidence (or lack of satisfactory evidence) before him". *The Solholt*²⁸ and *Standard Chartered Bank v Pakistan National Shipping Corp.*²⁹ themselves both provide good illustrations of this, the Court of Appeal upholding the trial judges' findings of failure to mitigate in the earlier case³⁰ and of no failure to mitigate in the later one.³¹ Of course what was being referred to in these cases was whether a claimant, required to take all reasonable steps to mitigate his loss if he is to recover for that loss, has or has not failed to do so; whether there is in the particular circumstances a need to mitigate in the first place will be a question of law.³²

¹⁸ cf. the cases at para.7-056, below.

¹⁹ [1926] A.C. 637, at 646.

²⁰ *ibid.* at 663.

²¹ [1963] P. 64 at 77-78.

²² [1919] 2 K.B. 581, CA.

²³ *ibid.* at 588 and 589 respectively.

²⁴ [1983] 1 Lloyd's Rep. 605, CA.

²⁵ *ibid.* at 608, col.1.

²⁶ [1919] 2 K.B. 581, CA.

²⁷ [2001] 1 All E.R. Comm. 822, at para.47.

²⁸ [1983] 1 Lloyd's Rep. 605, CA.

²⁹ [2001] 1 All E.R. Comm. 822.

³⁰ See the case at para.7-046, below.

³¹ See the case at para.7-063, below.

³² For circumstances in which the need to mitigate may not arise, see paras 7-020 *et seq.*, below.